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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/705,424

11/10/2003

Frank Litvack

P054

5168

43027

7590

07/31/2006

CINDY A. LYNCH  
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MENLO PARK, CA 94025

EXAMINER

IZQUIERDO, DAVID A

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/705,424

Applicant(s)

LITVACK ET AL.

Examiner

David A. Izquierdo

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 5, 7, 9, 11-16, 19, 21, 23, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sirhan et al. (U.S. Patent Application Publication Number 2002/0082679) as disclosed by Applicant within the Information Disclosure Statement

3. Sirhan et al. discloses a method of treating a blood vessel comprising:

- a. Identifying an implant site.
- b. Delivering an expandable stent containing a therapeutic capable agent.
- c. Implanting the expandable stent at the implantation site wherein the stent delivers the therapeutic capable agent from either a tissue *or* luminal facing surface. (Paragraph 0127) When the therapeutic capable agent is not delivered from the tissue facing surface it is delivered *primarily* from the luminal facing surface.

4. Sirhan et al. further discloses that the therapeutic capable agent may be any of an anti-inflammatory, an immunosuppressant, an anti-leukocyte, or a cyclooxygenase inhibitor and may further be disposed within a plurality of openings (58). Furthermore, Sirhan et al. discloses a rate-controlling element (paragraph 0146) or barrier layer capable directional delivery.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 6, 8, 10, 17, 18, 20, 22, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sirhan et al. (U.S. Patent Application Publication Number 20020082679).

Sirhan et al. discloses an expandable stent which delivers therapeutic capable agents, as claimed, however fails to disclose several agents, specifically:

- A nonsteroidal anti-inflammatory.
- An anti metabolite.
- An antithrombin.
- A high density lipoprotein.
- Or a glitazones or P par agonist.

7. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make the therapeutic capable agent any one of the abovementioned agents. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the agents disclosed by Sirhan et al. or the claimed list of agents because both are intended to prevent restenosis. Therefore, it would have been obvious to one of ordinary skill in the art to modify Sirhan et al. to obtain the invention as specified in the claims.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Izquierdo whose telephone number is 571-272-1943.

The examiner can normally be reached on Monday through Friday from 8:00 am until 4:30 pm.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David A. Izquierdo



**CORRINE McDERMOTT**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3700**